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FISCAL IMPACT REPORT

SPONSOR Harden DATE TYPED 2/20/2005 HB _____

SHORT TITLE Military Retirement Income Tax Deduction SB 94

ANALYST Taylor

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
(\$6,000.0)	(\$12,000.0)	(Similar)	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

Duplicates: SB 450

Relates to HB 27, HB 50, SB349

SOURCES OF INFORMATION

LFC Files

Taxation and Revenue Department (TRD)

SUMMARY

Senate Bill 94 provides a state income tax deduction for military retirement income. The bill is applicable to tax years beginning on or after January 1, 2005.

FISCAL IMPLICATIONS

This bill would decrease state income tax revenues by an estimated \$ 6.0 million in FY05 and \$12.0 million in FY06 million and subsequent years. Assumptions used to derive this estimate are based on information provided by the Taxation and Revenue Department for similar bills.

The full year (FY06) estimate assumes:

- there are 21,300 military retirees in the state;
- average annual pension is \$17,650;
- the average applicable tax rate is 3.2 percent
- The average relief per eligible tax payer is \$564 (multiply \$17,650 by 3.2 percent)
- The full year fiscal impact is a revenue decrease of \$12.0 million (Multiply \$564 by 21,300 retirees).
- The lower impacts for FY05 reflects the fact that bill would be effective for half of FY05.

TRD's table reporting the number of military retirees and average monthly pay for all states is attached (see page 3).

ADMINISTRATIVE IMPLICATIONS

TRD has reported that similar bills would have moderate administrative implications that can be handled with existing resources.

OTHER SUBSTANTIVE ISSUE

TRD analyses on similar legislation raised the following issues:

- The measure encourages military retirees to move to New Mexico.
- Individuals with incomes and other circumstances similar to people receiving the proposed exemption are likely to view it as unfair, especially when they compete with the retirees for jobs, and when the retirees are individuals with relatively high incomes. According to information the "military com" website (<http://usmilitary.about.com/>) military retirement pay can be over \$9,000 monthly for high-ranking officers retiring in 2004.
- Reducing state income tax liability tends to increase federal income tax liability because state income taxes are deductible against federal liability.

BT/njw

Attachment

Illustration: Number of Retirees and Total Military Pay by State

Retirees By State*

State	Army	Navy	Marine Corps	Air Force	Total DoD
Alabama	25,033	6,691	1,623	15,371	48,718
Alaska	2,761	652	133	4,302	7,848
Arizona	13,828	7,888	3,008	23,480	48,204
Arkansas	8,108	4,644	969	10,722	24,443
California	34,713	83,245	18,396	61,339	197,693
Colorado	16,586	5,299	1,299	21,640	44,824
Connecticut	3,006	4,986	584	2,166	10,742
Delaware	1,592	897	207	4,052	6,748
Dist. of Columbia	1,756	627	139	1,033	3,555
Florida	44,392	58,862	7,851	67,465	178,570
Georgia	40,385	11,109	3,421	21,094	76,009
Guam, MI	614	783	76	482	1,955
Hawaii	5,558	3,965	979	3,654	14,156
Idaho	2,554	2,511	480	4,802	10,347
Illinois	10,283	8,012	1,848	12,079	32,222
Indiana	8,947	4,421	1,377	6,396	21,141
Iowa	3,736	2,528	584	3,026	9,874
Kansas	9,014	2,943	788	6,446	19,191
Kentucky	14,033	3,442	944	4,959	23,378
Louisiana	9,531	4,921	1,337	11,159	26,948
Maine	2,898	4,004	511	3,681	11,094
Maryland	16,835	12,810	2,063	12,322	44,030
Massachusetts	7,406	5,798	1,314	6,412	20,930
Michigan	9,336	6,266	1,562	8,077	25,241
Minnesota	5,515	3,907	832	4,854	15,108
Mississippi	7,344	5,708	921	10,227	24,200
Missouri	13,078	6,850	2,078	11,222	33,228
Montana	1,911	1,516	360	3,223	7,010
Nebraska	2,336	1,798	340	7,886	12,360
Nevada	4,808	5,669	1,449	12,816	24,742
New Hampshire	2,828	2,087	436	4,037	9,388
New Jersey	10,028	5,386	1,226	5,423	22,063
New Mexico	5,516	2,928	723	11,144	20,311
New York	14,443	8,307	2,319	10,536	35,605
North Carolina	30,979	11,599	10,214	17,671	70,463
North Dakota	960	436	66	2,239	3,701
Ohio	12,226	8,036	2,348	17,921	40,531
Oklahoma	13,229	4,494	1,134	14,149	33,006
Oregon	5,883	6,759	1,358	6,689	20,689
Pennsylvania	18,018	11,686	3,251	12,148	45,103
Puerto Rico	7,539	415	131	942	9,027
Rhode Island	1,406	3,177	246	932	5,761
South Carolina	17,707	12,548	2,858	16,248	49,361
South Dakota	1,513	792	132	2,978	5,415
Tennessee	18,744	9,979	2,374	12,254	43,351
Texas	65,305	23,760	6,258	77,830	173,153
Utah	3,321	1,805	431	5,875	11,432
Vermont	1,424	679	142	1,027	3,272
Virginia	39,097	47,543	7,841	25,641	120,122
Virgin Islands	183	49	6	44	282
Washington	22,706	21,840	2,252	20,481	67,279
West Virginia	3,889	2,208	684	2,889	9,670
Wisconsin	6,580	4,025	963	4,906	16,474
Wyoming	985	715	135	2,309	4,144
Other	10,486	5,553	883	8,707	25,629
Total	642,892	469,558	105,884	651,407	1,869,741

*As of September 30, 1999

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Retired Military Monthly Pay** By State (In Thousands)

State	Army	Navy	Marine Corps	Air Force	Total DoD
Alabama	35,542	8,086	2,075	22,048	64,752
Alaska	3,088	765	122	5,273	9,248
Arizona	19,140	10,203	4,226	35,871	69,441
Arkansas	9,159	5,575	1,147	14,220	30,101
California	43,382	113,119	27,044	93,177	276,722
Colorado	23,403	7,167	1,715	37,311	69,596
Connecticut	3,136	6,609	517	2,680	12,941
Delaware	1,839	1,037	232	5,403	8,513
Dist. of Columbia	2,100	899	138	1,220	4,357
Florida	44,392	58,862	7,851	67,465	263,126
Georgia	40,385	11,109	3,421	21,094	101,102
Guam, MI	614	783	76	482	2,329
Hawaii	5,558	3,965	979	3,654	20,332
Idaho	2,554	2,511	480	4,802	13,541
Illinois	10,283	8,012	1,848	12,079	39,076
Indiana	8,947	4,421	1,377	6,396	23,671
Iowa	3,736	2,528	584	3,026	10,393
Kansas	9,014	2,943	788	6,446	25,013
Kentucky	14,033	3,442	944	4,959	27,745
Louisiana	9,531	4,921	1,337	11,159	33,481
Maine	2,898	4,004	511	3,681	13,360
Maryland	16,835	12,810	2,063	12,322	64,021
Massachusetts	7,406	5,798	1,314	6,412	22,815
Michigan	9,336	6,266	1,562	8,077	26,787
Minnesota	5,515	3,907	832	4,854	16,238
Mississippi	7,344	5,708	921	10,227	29,469
Missouri	13,078	6,850	2,078	11,222	40,180
Montana	1,911	1,516	360	3,223	8,759
Nebraska	2,336	1,798	340	7,886	16,926
Nevada	4,808	5,669	1,449	12,816	35,100
New Hampshire	2,828	2,087	436	4,037	12,786
New Jersey	10,028	5,386	1,226	5,423	24,918
New Mexico	5,516	2,928	723	11,144	29,861
New York	14,443	8,307	2,319	10,536	35,069
North Carolina	30,979	11,599	10,214	17,671	94,212
North Dakota	960	436	66	2,239	4,127
Ohio	12,226	8,036	2,348	17,921	47,831
Oklahoma	13,229	4,494	1,134	14,149	40,263
Oregon	5,883	6,759	1,358	6,689	25,538
Pennsylvania	18,018	11,686	3,251	12,148	52,869
Puerto Rico	7,539	415	131	942	6,544
Rhode Island	1,406	3,177	246	932	7,477
South Carolina	17,707	12,548	2,858	16,248	66,821
South Dakota	1,513	792	132	2,978	6,571
Tennessee	18,744	9,979	2,374	12,254	54,733
Texas	65,305	23,760	6,258	77,830	249,520
Utah	3,321	1,805	431	5,875	15,588
Vermont	1,424	679	142	1,027	3,784
Virginia	39,097	47,543	7,841	25,641	215,527
Virgin Islands	183	49	6	44	372
Washington	22,706	21,840	2,252	20,481	92,777
West Virginia	3,889	2,208	684	2,889	10,379
Wisconsin	6,580	4,025	963	4,906	17,141
Wyoming	985	715	135	2,309	5,283
Other	10,486	5,553	883	8,707	36,194
Total	642,892	469,558	105,884	651,407	2,535,320

**The monthly amount of payment (net pay) is before deductions for withholding taxes and allotments but after deductions for survivor benefits.

Source: http://www.military.com/Resources/ResourceFileView?file=retirees_stats.htm#Monthly

Department of Military Affairs
Proposed Amendment

Section 1. Change the following from:

“[NEW MATERIAL] EXEMPTION--MILITARY RETIREMENT PAY.--For the purpose of promoting economic development in New Mexico, an amount not to exceed fifty percent of military retirement pensions received by a veteran during the taxable year is exempt from taxation. For the purposes of this section, “veteran” means a person who has been honorably discharged from membership in armed forces of the United States and has served in the armed forces of the United States on active duty continuously for ninety days.”, to:

“[NEW MATERIAL] EXEMPTION--MILITARY RETIREMENT PAY.—For the purpose of promoting economic development in New Mexico, an amount not to exceed fifty percent of military retirement pay received by a military retiree, whether from regular or non-regular military service, is exempt from taxation”.

DISCUSSION

The reason to omit the term “veteran” and “membership in the armed forces” is because neither term are Title 10, or Title 32, military pay retirement status; rather, such terms are veteran’s “status’s”, as defined by Title 38 U.S.C. Section 101(2) and 38 C.F.R. Section 3.1(d)(2004). Unnecessary confusion is thus created because Title 38 “veteran” status has nothing to do with military retirement pay that flows from either Title 10 or Title 32 military service status, not a Title 38 veteran’s status that discusses veteran’s benefits or disability rights. Similarly, the language that states a veteran is someone who... “has served in the armed forces of the United States on active duty continuously for ninety days” is a veteran’s law term for threshold eligibility for veteran’s pensions, as per 38 C.F.R. Section 3.3(a)(1)(i); (a)(2)(i)(ii) and (iii). However, there is no longer a so-called “minimum period of active duty”, meaning 90-days of active duty or even 181-days of active duty, to define veteran’s status eligibility. The current legal standard to define a “veteran” is either a “twenty-four month period of continuous active duty,” or the “full period for which [the veteran] was called or ordered to active duty”, as per 38 U.S.C. Section 5303(A)(b); 38 C.F.R. Section 3.12(a)(1)(2004), such as in the case of a mobilized National Guardsmen for “365” or “565” days. In any case, however, the proposed Bill has confused military retirement with veteran’s status, which are wholly dissimilar concepts. Last, in this same regard, the proposed Bill speaks of “military retirement pensions”: there is no such thing. There is either an earned military retirement pay, as per Title 10 or Title 32, for years of service, or there is a veteran’s “pension”, as per Title 38, which coinciden-

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tally requires a “ninety day period of continuous wartime service for non-service-connected disability-based pension”, as per Title 38 U.S.C. Section 1512; 38 C.F.R. Section 3.3. The proposed Bill, however, is fatally flawed as drafted for the reasons herein stated and otherwise need to be remedied.